IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY **APPEAL CASE NO. 11 OF 2025-26**

BETWEEN

M/S KOTES (T) LTDAPPELLANT AND NATIONAL BUREAU OF STATISTICS (NBS) RESPONDENT **DECISION** CORAM 1. Hon. (rtd) Judge Awadh Bawazir - Chairperson 2. Dr. Gladness Salema - Member 3. Mr. Raphael Maganga - Member 4. Mr. James Sando - Secretary **SECRETARIAT** 1. Ms. Florida Mapunda - PALS Manager 2. Ms. Agnes Sayi - Principal Legal Officer 3. Ms. Violet Limilabo - Senior Legal Officer 4. Mr. Venance Mkonongo - Legal Officer FOR THE APPELLANT 1. Mr. Antony Komba - Chief Executive Officer 2. Mr. Kilian Chale

FOR THE RESPONDENT

1. Mr. Janti A. Bamiye

- Senior Supplies Officer

- Technical Manager

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This appeal, filed by M/S Kotes (T) Ltd (hereinafter referred to as "the appellant") against the National Bureau of Statistics abbreviated as NBS (hereinafter referred to as "the respondent"), pertains to tender No. S0/2025/2026/G/14 for Procurement of ICT Equipment (General Goods) (hereinafter referred to as "the tender").

Based on the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "the Appeals Authority"), the background of this appeal can be summarized as follows: -

The tender was done through the National Competitive Tendering method, as prescribed by the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "the Act") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "the Regulations").

On 14th August 2025, the respondent invited eligible tenderers to participate in the tender through the National e-Procurement System of Tanzania (NeST). By the submission deadline of 25th August 2025, thirty-two (32) tenders, including that of the appellant, were received and subsequently evaluated. Following evaluation, the award was recommended to M/S Wisjane Smart Systems (**the proposed awardee**) at a contract price of Tanzania Shillings Six Hundred Thirty-Five Million Two Hundred Forty-Two Thousand Eight Hundred (TZS 635,242,800.00) VAT exclusive, for a completion period of 45 days.

On 5th September 2025, the respondent issued a Notice of Intention to Award, informing the appellant of its intention to award the contract to the proposed awardee. It stated further that the appellant's tender was

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disqualified due to non-compliance with the procuring entity's requirements.

Dissatisfied with the disqualification, the appellant applied for administrative review to the respondent on 12th September 2025, who did not issue a decision. Consequently, on 26th September 2025, the appellant filed this appeal before the Appeals Authority.

At the hearing, the following issues were framed for determination: -

- 1.0 Whether the disqualification of the appellant's tender was justified; and
- 2.0 What reliefs, if any, are the parties entitled to?

SUBMISSIONS BY THE APPELLANT

The appellant's submissions were made by Mr. Kilian Chale, Technical Manager. He began by stating that the appellant was among the tenderers who participated in the tender process. On 5th September 2025, the appellant received a Notice of Intention to Award, indicating that its tender was disqualified due to non-compliance with the procuring entity's requirements. The appellant disputes this disqualification, noting that the respondent did not specify which requirement was allegedly unmet.

Mr. Chale argued that the respondent's evaluation criteria comprised of several distinct requirements; therefore, a general statement of non-compliance without identifying a specific breached criterion is vague, unjustified and contrary to the principles of transparency and fairness as provided in the Act. He averred that this ambiguity deprived the appellant of the opportunity to understand and address the alleged non-conformity.

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He further stated that the appellant duly lodged an application for administrative review through NeST. However, the respondent failed to issue a decision within the prescribed statutory period. He elaborated that the appellant only received a copy of the respondent's decision when served with the statement of reply to the appeal by the Appeals Authority.

Upon reviewing the statement of reply, the appellant noted that the respondent's decision was attached and sent via email. The appellant discovered that the email address used was incorrect: The decision was sent to kotesltd@gmail.com instead of the designated email in the NeST and on the appellant's letterhead, kotesltd@gmail.com. He asserted that this error constituted a breach of the respondent's statutory duty and procedural fairness, justifying this appeal before the Appeals Authority.

Regarding the requirement to submit three contracts of similar nature and value to demonstrate specific experience, Mr. Chale stated that the appellant submitted two (2) contracts that complied with the tender requirements. The third contract was an aggregation of four contracts with the Dar es Salaam Institute of Technology (DIT), each with a different contract value but all executed on 30th May 2024. The appellant considered these contracts as one since they were executed under a single tender comprising different lots. However, after reviewing the respondent's statement of reply, the appellant conceded that the third contract did not meet the tender's experience requirements. Mr. Chale argued that if the respondent had issued its decision in a timely manner, the appellant would not have proceeded to lodge the appeal.

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Based on these observations, Mr. Chale prayed for compensation on the grounds that the respondent failed to specify a clear reason for the appellant's disqualification in the Notice of Intention to award and failed to issue a timely decision, thereby neglecting to respond to the appellant's complaint within the prescribed time.

REPLY BY THE RESPONDENT

The respondent's submission was made by Mr. Janti Bamiye, Senior Supplies Officer. He commenced by stating that the appellant was disqualified for failing to meet the "specific experience criterion outlined in Section IV — Qualification and Evaluation Criteria", particularly under the technical evaluation criteria for specific experience.

Mr. Bamiye explained that tenderers were required to submit three contracts of similar nature, each with a value of TZS 800,000,000, to satisfy specific experience requirement. The appellant submitted two (2) contracts that complied with the criterion. However, the appellant also submitted four contracts with the DIT, each with different values, claiming these collectively as a third contract because they originated from a single tender comprising multiple lots.

The respondent rejected these contracts because they did not meet the tender document's requirements. He emphasized that each contract submitted had to meet the minimum value of TZS 800,000,000. Consequently, the appellant's tender was fairly disqualified at the technical evaluation stage.

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Mr. Bamiye further stated that after completion of the evaluation process, the respondent issued the Notice of Intention to award to all participating tenderers. The notice informed the appellant of the reason for its disqualification and provided five working days, until 12th September 2025, to submit a complaint, if any, through the NeST. Mr. Bamiye noted that the appellant did not file its complaint through NeST as required by law. Instead, the complaint was received from the Appeals Authority via email dated 17th September 2025.

Upon receiving the appellant's complaint, the respondent issued a decision dated 18th September 2025, which was sent to the email indicated on the appellant's letterhead. Mr. Bamiye asserted that he made follow-up phone calls but they went unanswered. However, after reviewing the letterhead, he admitted that the decision was mistakenly sent to kotesltd@gmail.com instead of the correct address, kotesltd@gmail.com.

In view of the above submissions, Mr. Bamiye maintained that the evaluation process complied fully with the Act and its regulations, ensuring transparency, fairness and adherence to the prescribed procedures.

In conclusion, he affirmed that the appellant's disqualification was both procedurally correct and substantively justified in accordance with the tender requirements and governing procurement laws.

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ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the disqualification of the appellant's tender was justified

In addressing this issue, it is important to note that when filing this appeal, the appellant initially challenged the reason for its tender's disqualification as vague and unclear. However, during the hearing, the appellant acknowledged that, after reviewing the respondent's statement of reply and its attachments, he was satisfied that the disqualification was justified due to failure to meet the specific experience requirement set out in the tender document. The appellant conceded that the submitted contracts with DIT did not comply with Section IV — Qualification and Evaluation Criteria, particularly the technical evaluation criteria regarding specific experience. According to this criterion, tenderers were required to submit three contracts each with a value of TZS 800,000,000.00.

In complying with this requirement, the appellant submitted two (2) contracts that met the specific experience criterion in both nature and value as detailed in the table below:

S/N	Name of the Institution	Tender Number and Description	Date of Contract	Contract value
1.	Ministry of Information, Communication and Information Technology	Contract No. ME.006/2021- 2022/HQ/W/04 LOT 4 for Construction, Installation, Testing and Commissioning OFC routes from Kambi Katoto-Chunya-Mbeya (291.48 KM)	1 st February 2022	TZS 984,597,852.80 VAT Inclusive

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2.	Zanzibar	Electricity	Corporation	Contract	No.	TZ-ZECO-	24 th August	TZS	818,865,151.15
	(ZECO)			297872-GO-	-RFQ for	Supply of	2022	VAT	Inclusive
				Goods and Ancillary Services,					
				viz, Supply of ICT Equipment					
				for ZESTA Project Office					

However, the third contract submitted by the appellant consisted of an aggregation of four contracts with the DIT, which were all signed on 30th May 2024, as detailed in the table below:

S/N	Tender Number and Description	Contract value			
1.	Contract No. Y1/2023/2024/G/87/2 for Supply and Installation of ICT Infrastructure Equipment for Rafic Project	TZS 698,064,400.00 VAT Inclusive.			
2.	Contract No. Y1/2023/2024/G/87/3 for Supply and Installation of ICT Infrastructure Equipment for Rafic Project	TZS 40,887,000.00 VAT Inclusive			
3.	Contract No. Y1/2023/2024/G/87/4 for Supply and Installation of ICT Infrastructure Equipment for Rafic Project	TZS 342,447,800.00 VAT Inclusive.			
4,	Contract No. Y1/2023/2024/G/87/5 for Supply and Installation of ICT Infrastructure Equipment for Rafic Project	TZS 127,416,400.00 VAT Inclusive.			

The above observations clearly demonstrate that the appellant failed to meet the specific experience requirement outlined in the tender document. Therefore, we find the respondent's decision to disqualify the appellant's tender was proper and in full compliance with regulation 213(2) of the Regulations which reads as follows: -

"r.213 (2) Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity and may

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not subsequently be made responsive by correction or withdrawal of that deviation."

(Emphasis added)

The above provision states that if a tender fails to meet requirements of the tender document, the procuring entity must reject it, and such a tender cannot be made responsive through correction or withdrawal of the deviation.

Given the appellant's own admission of non-compliance with the specific experience requirement, we will not delve into the appellant's arguments regarding unfair disqualification. However, we will address the appellant's contention that, had the respondent issued a notice of intention to award with a clear reason for disqualification or timely entertained its application for administrative review, this appeal could have been avoided.

Regarding this claim, the appellant complained that the notice of intention to award contained an unclear reason for its disqualification and challenges the respondent's refusal to entertain its application for administrative review. The respondent denied that it issued an unclear notice of intention to award and asserts that it never received the appellant's application for administrative review. Instead, the respondent stated that it received the appellant's complaint from the Appeals Authority through an email dated 17th September 2025 rather than through the NeST as required. Despite this irregularity in submission, the respondent entertained the complaint and issued a decision by letter dated 18th September 2025, which was communicated to the appellant through an email kotesItd@gmail.com.

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Upon reviewing the appeal record, we find that the notice of intention to award indeed did not specify the precise reason for the appellant's disqualification. It only indicated that the appellant's tender failed to comply with the tender document requirements.

We reviewed regulation 238(3) of the Regulations which reads as follows: -

"r.238 (3) The notice referred to in sub regulation (2) shall contain

- (a) the name of the successful tenderer;
- (b) the total contract cost and the completion or delivery time; and
- (c) the reasons for the unsuccessful tenderer's failure according to the evaluation report."

(Emphasis added)

This provision requires a procuring entity, when issuing a notice of intention to award, to inform tenderers of the name of the successful tenderer, the contract amount, the completion period and the reasons for the unsuccessful tenderer's failure as detailed in the evaluation report.

Applying this legal requirement to the facts of this appeal, we find that the notice of intention to award included the name of the successful tenderer, the contract amount and the completion period. However, it did not specify the actual reason for the appellant's disqualification as indicated in the evaluation report. The evaluation report states clearly that the appellant's tender was disqualified at the technical evaluation stage for failing to meet the specific experience criterion.

Given the above observation, the respondent's issuance of a notice of intention to award without stating the actual reason for the appellant's disqualification contravened regulation 238(3)(c) of the Regulations.

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We further considered the respondent's contention that the appellant failed to lodge its complaint through the NeST as required by law. Upon review, we observed that the appellant lodged its complaint through NeST on 12th September 2025. However, the respondent denied receiving the complaint in NeST, alleging instead that it received it from the Appeals Authority.

The respondent asserted that it entertained the complaint and communicated its decision to the appellant through the email kotesltd@gmail.com. During hearing, it was revealed that this email address was incorrect, resulting in the appellant not receiving the decision. The correct email address, as provided in the NeST and on the letterhead, is kotestltd@gmail.com.

Given these facts, we find that the respondent failed to communicate its decision on the appellant's complaint as required by section 120 (6) of the Act, thereby contravening the law. However, this failure did not prejudice the appellant's right because, under section 121(2) of the Act, the appellant is entitled to file an appeal directly to the Appeals Authority if the respondent's accounting officer does not issue a decision within the prescribed time.

Since the appellant filed this appeal within the prescribed timeframe, we conclude that its rights were not infringed. Nonetheless, the respondent is directed to strictly comply with the legal requirements in future tender processes.

Given the above findings, we conclude affirmatively on the first issue that the disqualification of the appellant's tender was justified.

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2.0 What reliefs, if any, are the parties entitled to?

Considering the above findings, we dismiss the appeal for lack of merit. We order the respondent to proceed with the tender process in accordance with the law. We make no order as to costs.

It is so ordered.

This decision is binding and can be enforced in accordance with section 121(7) of the Act.

The Right of Judicial Review as per section 125 of the Act is explained to the parties.

This decision is delivered in the presence of the parties on this 5th day of November 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



MEMBERS: -

- 1. DR. GLADNESS SALEMA.
- 2. MR. RAPHAEL MAGANGA